

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
2002 Biennial Review of)	CG Docket No. 02-311
Telecommunications Regulations)	
Within the Purview of the Consumer &)	
Governmental Affairs Bureau)	

**Comments of Self Help for Hard of Hearing People (SHHH)
Notice of 2002 Biennial Review of Telecommunications Regulations
Within the Purview of the Consumer & Governmental Affairs Bureau**

Introduction

Self Help for Hard of Hearing People (SHHH) submits these comments in response to CG Docket No. 02-311, Notice In the Matter of Year 2002 Biennial Regulatory Review, relating to telecommunications regulations that are within the purview of the Consumer & Governmental affairs bureau.

SHHH is the major national consumer organization of people with hearing loss. Its members are people of all ages and degrees of hearing loss. Through a national office, thirteen state organizations and a network of 250 chapters nationwide, SHHH members consistently work towards increasing communication access to enable people with hearing loss to continue to

function in mainstream society. Access to telecommunications is integral to being able to actively participate in today's world.

It is estimated that one in ten of the population has some degree of hearing loss. This number is on the increase as a result of the noise that we are exposed to and the aging of our society. The incidence is even higher for people over 65 years of age, of whom one in three has some degree of hearing loss. In the United States today approximately 6 million people use hearing aids and 20,000 people have cochlear implants.

Pursuant to Section 11 of the Communications Act of 1934, the Commission is required (1) to review biennially its regulations "that apply to the operations or activities of any provider of telecommunications service," and (2) to determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between the providers of such service." The Commission is directed to repeal or modify any such regulations that it finds are no longer in the public interest.

SHHH Supports and Emphasises the Need for the Commission to Maintain Disability Access Rules

In these comments SHHH focuses on the regulations that impact people with hearing loss. Specifically these are Access to

Telecommunications Service and Telecommunications Equipment, Access to Voicemail and Interactive Menu Services, Telecommunications Relay Services, and Hearing Aid Compatibility

The telephone is integral to our daily lives and to not have access to it is unimaginable for most people. Congress recognized this when it passed the Hearing Aid Compatibility Act of 1988 (HAC Act)¹. At that time Congress stated “to the fullest extent made possible by technology and medical science, hard of hearing persons should have equal access to the national telecommunications network. “ (Pub.L. 100-394, Section 2 (1988)).

The Commission regulates key areas that are critical to the ability of someone with a hearing loss to operate in everyday life and particularly in the workplace. It is in the public interest that disability access regulations be retained, because competition has not worked, and is not working. Market forces alone are not enough to fulfill the goal of ensuring access to telecommunications for people with disabilities. The Commission must retain the rules designed to provide individuals with hearing loss with the same telecommunications technologies available to other Americans so that they may share in the benefits of these technologies and live safer, healthier

¹ 47 U.S.C. §610.

and more productive lives. SHHH is convinced that the regulations are the only way to achieve access for people with hearing loss.

Access to telecommunications is needed not just for safety but to enable people with disabilities to work, earn and pay taxes. There is still much to be done to get people with disabilities working and earning close to the levels of the general population. The most recent Census Bureau Data (2002e) shows in the so-called peak earning years of 45 to 54, workers with disabilities averaged just \$35,000 per year, versus workers with no disabilities at \$49,000. Again the Census bureau (2002b) reported that a mere 25% of those with disabilities versus 78% of those with no disabilities were either working or were actively pursuing employment. It is exceedingly difficult, if not impossible, for an individual to work productively without access to telecommunications services and equipment.

Access to Voicemail and Interactive Menu Services by People with Disabilities

This rule must be retained and enforced. We recognize and thank the Commission for its willingness to put out notices reminding industry of its obligations to create accessible IVR systems. As a result of this particular rule, the IVR Forum was established. This brings together consumer and industry participants to review and discuss potential accessibility solutions

for voice-mail and other IVR response systems and services. The aim of the Forum is to 1) identify features that could make IVRs easier to use by people with disabilities 2) Identify issues to present to standards organizations and appropriate entities for further solution development 3) Create a common resource of potential solutions to use for developing new products and enhancements to existing products 4) Identify and evaluate emerging technologies that will have an impact on IVRs and provide guidance to stakeholders about how to address accessibility issues 5) Involve consumers, government entities, telecommunications and assistive technology manufacturers, service providers, and other interested parties in the identification of accessible solutions and 6) Provide industry, consumers, and government entities with educational and informational resources, including those highlighting the benefits of making IVRs more accessible, usable, and compliant with relevant regulations.

The Forum is making headway and will impact IVR accessible design for the future, that will not only benefit users with disabilities but also the general public. Many of the features that will provide disability access will make the IVR systems easier and more acceptable to use for everyone.

In October 2002, SHHH conducted an online survey on IVR systems that was completed by over 200 people who are hard of hearing. (Survey results and consumer comments are attached.) The survey reinforced what we already knew, that IVR systems set up significant barriers for people with hearing loss and that IVR systems must be made accessible if people with hearing loss are going to be able to conduct business in the workplace and their everyday lives. Without the rule, the process underway could derail and industry would not have the same motivation to find solutions.

Hearing Aid Compatibility (HAC)

According to the HAC Act, wire line phones manufactured after 1989 have to be hearing aid compatible and those manufactured after January 2000 also have to incorporate volume control. This means that many people with hearing loss, with or without hearing aids, can use most wire line phones manufactured after the effective date. People with telecoil-equipped hearing aids can be assured that if they purchase a phone they will be able to inductively couple it to their aid. It also means that they will be able to use phones in other people's homes, hotels, hospitals, workplaces, nursing homes and other places covered by the law. The regulation for wireline phones has had a tremendous impact on the ability of people with hearing

aids to access the nationwide phone system. It works. But we are in a new era in phone systems today. With the firm establishment of the digital phone network the HAC regulation needs to be modified to bring hearing aid users into the 21st century.

Virtually all telephones were required to be hearing aid compatible under the HAC Act, including new telephones and telephones associated with a new technology or service. Telephones used with public mobile services and private radio services were exempt. Hearing aid wearers who listen on the phone with a telecoil are not able to use wireless phones because the handset manufacturers are not required by the HAC regulation to install the Part 68 component in their phones. As more and more mobile phones come onto the market, hearing aid wearers find it increasingly difficult to find a phone they can use. SHHH urges the Commission to keep the hearing aid compatibility rules and strengthen them by revoking the exemption for digital wireless telephones to ensure that the burgeoning population of people with hearing loss – baby boomers, children with cochlear implants, and the growing older population - will be assured access to the phone system in the years to come.

Access to Telecommunication Products and Services

In addition to hearing aid compatibility, Section 255 of the Telecommunications Act of 1996² addressed the need for access to telecommunications by people with disabilities through requirements that telecommunications products and services be accessible to people with disabilities. Companies started out taking Section 255 seriously, providing staff training, and conducting research into making telecommunications products and services accessible. However, there is evidence that with the current economic downturn that has hit telecommunications companies particularly hard, the regulation regarding disability access is being placed on the back burner. This is compounded by the fact that designing for disability access is not perceived as an easy task and the standard required is weak and has been interpreted as “easy and inexpensive” to do.

Unfortunately, for people with hearing loss, the problem of interference between hearing aids and digital wireless phones is a complex one and the existing standard is too weak to produce real results. Compared to the HAC Act that sets a manufacturing requirement, Section 255 leaves it up to the manufacturers to do whatever is “readily achievable.” Many manufacturers have interpreted this phrase to mean “easy and inexpensive.” Handset manufacturers have focused on marketing attachments that can be

² 47 U.S.C. §255.

used with telecoil-equipped hearing aids. They are not focusing on real design changes with solutions built into the phone. These regulations are not enforced stringently enough by the FCC. When a consumer complains about a product or service to the company they are often placated by the provision of an alternate product. The case is closed and the company is never required by the Commission to demonstrate why the original product was not made accessible and to demonstrate the steps taken to try to make it accessible according to Section 255 rules. The regulation's original intent was to make progress in access. In reality it doesn't work because companies can get away with doing nothing too easily. SHHH urges the Commission to keep the rule and more importantly, to beef up its enforcement of Section 255. The regulations are only as effective as the enforcement provisions enacted.

The bottom line is that hearing aid users are being denied access to an increasingly vital technology. Personal Communication Service (PCS) devices are no longer a novelty or a high-end product. Nor are they primarily used for emergency situations. They have become commonplace and consumers are relying on them more and more. Consumers with hearing loss want digital equipment and the full panoply of digital services that are available to hearing consumers, to be compatible with hearing aids and TTYs.

Market Forces are Not Effective for People with Disabilities

Market forces and competition are not taking the place of these rules. The Commission must retain the rules designed to provide access for people with hearing loss as they are the only way to achieve access for people with disabilities.

Without exception, access to telecommunications for people with hearing loss has come about through legislation. Hearing aid compatibility and volume control in analog voice phones, decoding capability in TVs, and telecommunications relay services are just a few examples where legislation has enabled people with hearing loss to use telecommunications. Without this legislation these changes would not have occurred. But for the HAC Act, people with hearing loss would not be able to use regular wire line phones. Manufacturers would not, of their own volition, incorporate Part 68 components into their telephones. All came about as a consequence of federal mandates and regulations developed by the Commission and would not be likely to develop in the market. If wireless manufacturers continue to remain exempt from making their handsets hearing aid compatible under the HAC Act, full and equal access will never be achieved to PCS devices by people who use hearing aids. Accordingly, unless wireless manufacturers are required to make digital wireless telephones that create the least interference possible with hearing aids under Section 255, market forces

alone will be insufficient to provide access for people with hearing loss to telecommunications services.

It is definitely in the public interest for people with hearing loss that the Commission keep all the rules related to communication access. SHHH wants to make sure that the Commission realizes how critical their involvement is in ensuring access for people with hearing loss to telecommunications. It is literally our only hope for full and equal access. Market forces, not government regulation to achieve access objectives, do not work for people with disabilities. In fact, even when industry has a product that is accessible to people with hearing loss they fail to market it as such. There are text-based mainstream products such as two-way pagers, instant messaging, digital telephones with internet access, wireless PDAs, that have been designed for general public use, that incorporate features that make them especially attractive to people with hearing loss. None of them are marketed as being accessible to and ideal for people with hearing loss. This is an ongoing problem that became the subject of a recent Department of Justice seminar that aimed to promote more awareness of the disability market and how to market to them.

Respectfully submitted,

A handwritten signature in cursive script that reads "Brenda Battat". The signature is written in black ink on a white background.

Director of Public Policy and State Development
7910 Woodmont Avenue, Suite 1200
Bethesda, Maryland 20814
(301) 657-2248 (voice)
(301) 657-2249(TTY)

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